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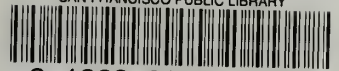
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A REPORT ON THE SAN FRANCISCO
PUBLIC DEFENDER'S OFFICE

by

THE SAN FRANCISCO COMMITTEE ON CRIME

MOSES LASKY, Co-Chairman
WILLIAM H. ORRICK, JR., Co-Chairman
IRVING F. REICHERT, JR., Executive Director

THE THIRD REPORT OF THE COMMITTEE
OCTOBER 22, 1970

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EXECUTIVE DIRECTOR

October 12, 1970

WILLIAM H. ORRICK, JR.
405 MONTGOMERY STREET
SAN FRANCISCO

Honorable Joseph L. Alioto,
Mayor of the City and County of San Francisco,
City Hall,
San Francisco, California 94102.

Dear Mr. Mayor:

The San Francisco Committee on Crime respectfully submits to you, as its third report, the enclosed Report on the San Francisco Public Defender's Office.

The financial burden of maintaining that office lies on the City, but there is little, if anything, the City can do to limit that burden. The decisions of the highest courts in the land and the obligations a free society bears to see that indigent accused are properly represented leave no alternatives. It may be added that belief by the minority communities of the City that their members do receive that full representation should play a part in allaying dissatisfaction that could contribute to the City's burden. The Committee is aware of the budgetary problems of the City but cannot avoid recommending further financial support to the Public Defender's Office.

The Public Defender's Office in this City performs reasonably well, and yet an objective study of it leaves one with a feeling of inadequacy extending beyond its financial support. The last chapter of the report contains a list of 22 recommendations. A major one is for a revision of the Charter provisions on the Public Defender. There are seven other recommendations to the Mayor and Board of Supervisors, and there are recommendations to the Public Defender, the Courts, the Police Department, the District Attorney, and the State Legislature.

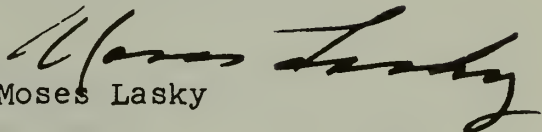
It is worthy of comment that this report well illustrates the difficulties the Committee on Crime confronts, the standards it has set for itself, and the reason reports on other aspects of the Committee's work are forthcoming more slowly than we had hoped. It is easy either to condemn public officials or public institutions or to condone and "whitewash" them; it is also easy to circulate provocative or headline-catching charges. It is a much slower task to sift, check and recheck data and charges, so that a final report on any subject will be unjust to no one person and yet serve the public interest properly. The Committee chooses the second course. When other reports issue from this Committee, we are confident that they will reflect the same painstaking and objective approach.

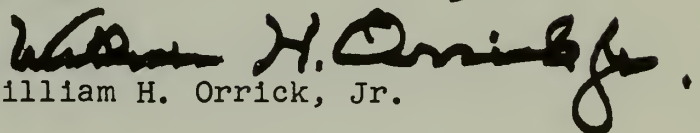
Honorable Joseph L. Alioto

3.

A letter similar to this is going forward to the
President of the Board of Supervisors.

Respectfully,


Moses Lasky


William H. Orrick, Jr.

Co-Chairmen

ML:MD

Enc.

SAN FRANCISCO COMMITTEE ON CRIME

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October 12, 1970

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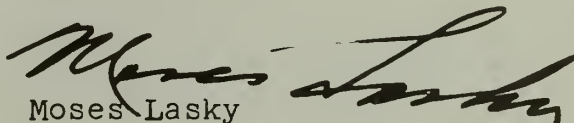
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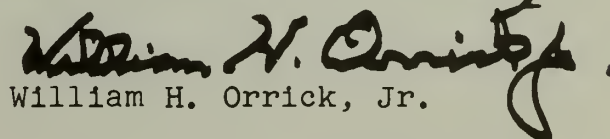
Honorable Dianne Feinstein,
President of the Board of Supervisors,
City and County of San Francisco,
City Hall,
San Francisco, California 94102.

Dear Mrs. Feinstein:

Pursuant to the resolution authorizing the San Francisco Committee on Crime, we herewith submit to you, as its third report, the enclosed Report on the Public Defender's Office. Sufficient copies are enclosed for all members of the Board of Supervisors. We also enclose a copy of the letter by which we are concurrently submitting the report to the Mayor, and we invite particular attention to the recommendations in Chapter VI of the Report entitled "To the People of San Francisco and to the Mayor and Board of Supervisors".

Respectfully,


Moses Lasky


William H. Orrick, Jr.

Co-Chairmen

ML:MD
Encs.

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PREFACE

In reaching its conclusions on the Public Defender's Office in San Francisco, the San Francisco Committee on Crime has had the benefit of the observations of two study teams, separate from the Committee and from each other, plus the observations of its own staff and of members of the Committee itself. The National Legal Aid and Defender Association (N.L.A.D.A.) supplied the first study team at no cost to the Committee and at the invitation of both the Committee and the Public Defender of San Francisco. N.L.A.D.A. has its headquarters in Chicago and sponsors a National Defender project designed to strengthen and improve public defender offices throughout the United States. Five men constituted the N.L.A.D.A. team, all former defense counsel in criminal cases and four of them also former prosecutors: John J. Cleary, Deputy Director of the National Defender Project; James D. Santini, The Public Defender, Clark County (Las Vegas), Nevada; Patrick J. Hughes, Director of Defender Services, N.L.A.D.A.; Anton R. Valukas, Assistant Director of the National Defender Project; Lewis A. Wenzell, Assistant Director of the Defender Services, N.L.A.D.A.

This team surveyed the San Francisco Public Defender's Office during the week of November 17-21, 1969, during which they interviewed judges, attorneys in the Public Defender's Office, and private attorneys, and also made numerous on-the-scene evaluations of office and courtroom procedures.

The report of the N.L.A.D.A. team was received by the Crime Committee in March 1970, and the Committee furnished copies to the Public Defender's Office. Because the Public Defender questioned the accuracy of the report in a number of respects, because policies and procedures in the Public Defender's Office may have changed between the time of the study in November 1969, and receipt of the report in March 1970, and for other reasons stated in the body of the present report, the Committee commissioned a second study. This was conducted by Mr. Bruce M. Weiss, Deputy Public Defender of Contra Costa County, and Mr. Toshio Harunaga, a private attorney of San Jose who was previously employed by the Public Defender's Office for Los Angeles County. Messrs. Weiss and Harunaga interviewed the Public Defender, each attorney in his office, his office investigators, private attorneys, and judges of both the Municipal and Superior Courts. To supplement these interviews they observed Deputy Public Defenders at work in the office, in the Courts, and interviewing clients.

The staff of the Crime Committee has made independent observations, has talked to various members of the Public Defender's Office, as well as members of the bench and bar, has spent nearly one year observing the operation of criminal justice in San Francisco's courts, and has interviewed members of numerous community-based organizations and solicited their views on the Public Defender's Office. Some of these organizations were Youth For Service; Mission Rebels; Western Addition Community Organization; Real Alternatives Program; Telegraph Hill Neighborhood Association; and Hospitality House. Some members of the Committee itself have personally interviewed the Public Defender.

Statistics in this report about the San Francisco Public Defender's Office come from its annual reports and about arrests in San Francisco from reports of the Police Department. All state-wide statistics are taken from "1968 Superior Court Prosecutions, Extended Data," Bureau of Criminal Statistics, Department of Justice, State of California.

This report is the third in a series on the agencies of the system of justice in San Francisco. The San Francisco Committee on Crime was appointed by Mayor Joseph L. Alioto pursuant to Resolution No. 101-68 of the Board of Supervisors of the City and County of San Francisco. Grants have been received from the Ford Foundation to make the study of the system of justice possible. The Committee also thanks the National Legal Aid and Defender Association for its assistance.

REPORT ON THE SAN FRANCISCO PUBLIC DEFENDER'S OFFICE

In 1963 the Supreme Court of the United States held that the Constitution requires counsel to be supplied to indigent defendants (*Gideon v. Wainwright*, 372 U.S. 335). But, for 42 years before that, San Francisco was providing the assistance of a Public Defender's Office to defendants unable to pay for an attorney. In October 1921, the Office of the Public Defender was established in San Francisco pursuant to state legislation.¹

The Public Defender's Office now provides representation in both felony and misdemeanor cases, in hearings on the commitment of the mentally ill, and in juvenile court. A defendant who cannot afford to pay an attorney may obtain the services of the Public Defender by submitting an application at the Public Defender's Office, located on the second floor of the Hall of Justice, 850 Bryant Street. Often, too, the court appoints the Public Defender in open court to represent a defendant, after ascertaining that he cannot afford to engage a private attorney.

Under Section 33 of the Charter of San Francisco the Public Defender is an elected official. The present defender has been in office since April, 1954, at which time the office had only six attorneys. In June, 1970, it had twenty-four full-time attorneys, including the Public Defender himself, with salaries ranging from \$28,600 to \$13,330 per year,² three full-time investigators, one confidential secretary, one senior clerk-typist, two legal stenographers and three clerk-typists. The Public Defender appoints his attorneys, free of Civil Service requirements, and they serve at his pleasure.

Many matters require comment in this Report, but first we go to the heart of the subject.

1. The duties of the Public Defender are set forth in various state statutes (Sec. 27706 Govt. Code, Secs. 633, 634, 658, 659, 700 Govt. Code; Sec. 700 W. & I. Code; Secs. 4852.01 - 4852.2 P.C.), and in Section 33 of the City Charter.

2. Position	Rate of Compensation	Number
Chief Attorney, 814	\$1909-2321 per mo.	1
Head Attorney, 8182	1733-2105 per mo.	1
Principal Attorney, 8180	1610-1956 per mo.	5
Senior Attorney, 8178	1324-1610 per mo.	12
Trial Attorney, 9176	1116-1357 per mo.	5

THE BASIC PROBLEM OF STRUCTURE AND SELECTION

The Public Defender's Office is one of the agencies of the system of criminal justice. *But it is fundamentally different from all the other agencies of that system.* The purpose of the others is to prevent crime or to enforce the laws against violators. This is obviously true, for example, of the Police Department and the District Attorney. It is also true of the courts, even though it is the duty of the courts to be impartial. But the purpose and function of the Public Defender's Office, while equally important to a democratic system such as the American society treasures, *is* different. Its purpose and function are to provide to the poor, helpless, bewildered and defenseless all the protection that our Constitution and sense of fairness provide to others of greater means.

From this fundamental fact flows a basic and cardinal truth: *The Public Defender should not be elected but should be appointed.* The distinction between the Public Defender and District Attorney in this respect should be apparent. The District Attorney is the agency to which the public looks for vigilant and fearless enforcement of the laws. He must see that the laws are obeyed, not only by the man-in-the-street but by all other agencies of government and public administration. For that reason he must not be beholden to any other public official, and he must draw his strength directly from the public.

But the Public Defender, by the very necessity of protecting those charged with crime, is likely to become unpopular in exact proportion to his diligence in performing his duties, because the defense of the accused is rarely likely to be popular. For that reason, he must not be elected, he must be appointed.

Moreover, to discharge his duties properly the Public Defender and his deputies must be dedicated to their task, with full realization that theirs is an important duty in our society and form of government, and not just job-fillers. They must also be learned and competent attorneys, as able as the prosecutors and as the private lawyers who represent the more affluent. The electorate is not well qualified to judge these qualities.

San Francisco was in the forefront of enlightened law enforcement in creating a Public Defender's Office as early as 1921, and by and large the work of the office has been commendable. But such success as it has achieved has been due to the dedication and ability, over the years, of its deputies. Since its creation it has had but three Public Defenders, the first of whom was convicted and sent to San Quentin on a charge involving murder, and its leadership from the beginning has ranged from bad to mediocre.

There is no basis to assume that selection of another public defender by election will work any improvement. It is the belief of the Crime Committee that the fundamental imperative is to amend the City Charter so as to make the Office of Public Defender appointive. There are certainly dedicated and able men who would be qualified for appointment. A law office of twenty-four is a large law office. Properly administered and properly directed, it can perform remarkably well.

In 1962, a Special Committee of the San Francisco Bar Association studied the Office of the Public Defender and examined numerous methods of selection. The Bar Committee's report³ said, among other things:

The method of selecting the Public Defender and his deputies may well play an important part in establishing an office which is capable of giving experienced, competent and zealous representation and of assuring undivided loyalty by the defense counsel to the indigent defendant.

There are three accepted systems of selection in the United States: elective, appointive and civil service. In San Francisco, the Public Defender is elected for a four year term and his deputies are appointed by him to serve at his pleasure.

Both the public defender and the public prosecutor are public officials. But the public defender is retained to fulfill society's duty to see that all defendants, irrespective of means, have equal protection under the law, while the public prosecutor is required to serve society's interest in law enforcement. The duties of the public prosecutor include making policy decisions relating to the community; the duties of the public defender do not.

The Bar Committee concluded by recommending selection of both the Public Defender and his staff attorneys through Civil Service. The San Francisco Committee on Crime is in accord that neither the Public Defender nor his staff should be elected, but it recommends appointment rather than Civil Service. All attorneys in California have passed a bar examination that more rigorously tests basic knowledge in the relevant field than any Civil Service examination can do, and Civil Service has not been notably successful in filling positions of superior importance in government.

The Public Defender should be appointed. But the manner of appointment is also important. The Crime Committee is aware that more than once in the history of the City vacancies in elective offices have been filled by unfortunate appointments designed, for example, to get a man out of the Board of Supervisors. Therefore some method is necessary to foreclose the possibility of appointment becoming a political award. The Mayor should appoint the Public Defender subject to confirmation of the Board of Supervisors, as the Charter now provides for some officials.⁴ Before making his appointment the Mayor should obtain nominations from the judges of the Superior Court acting collectively, from the judges of the Municipal Court, acting collectively, and from the several local associations of lawyers recognized by the State Bar of California. From the list of nominations the Mayor should make his appointment.⁵ The exact text of an amendment to the Charter of the City and County of San Francisco is set forth in the Recommendations at page 22 of the Report.

3. Approved by the Board of Directors of San Francisco Bar Ass'n. August 30, 1962.

4. For example, War Memorial trustees, Charter, Sec. 44.

5. Section 45 of the Charter requires the Mayor, before appointing the professional members of the Art Commission to "solicit nominations" from various private organizations.

Just as we do not favor Civil Service selection of the Public Defender himself, we do not favor Civil Service selection of his staff attorneys. It is difficult to measure by any objective testing the skills which are required in criminal trial work. The Public Defender's Office, like any private law firm, requires harmony among its attorneys, and it is dubious whether Civil Service can ascertain whether any applicant will be compatible with other members of the staff. The Public Defender should take responsibility for the quality of representation afforded by the Office, and his personal reputation should not be made to depend on the skills of attorneys whom he has not selected. The Bar Committee recommended that staff attorneys be selected by Civil Service to avoid appointment by the Public Defender for their ability to attract votes for him, a consideration that vanishes if he is appointed. The present system, by which the Public Defender appoints his own deputies, should be continued.

II.

THE WIDE DISCONTENT WITH THE PUBLIC DEFENDER'S OFFICE, THE REASONS FOR IT, AND THE CURES

Believing that a study of the Public Defender's Office called for specialized skills capable of recommending improvements, the Crime Committee was pleased to join with the Public Defender in inviting the National Legal Aid and Defender Association (N.L.A.D.A.) to make a study of the Office (as stated in the preface of the present Report). The N.L.A.D.A. report turned out to be a very severe condemnation of the Public Defender and his Office.

Moreover, the Committee on Crime discovered another disturbing fact: There is a deep-seated antagonism toward the San Francisco Public Defender's Office among minority groups, particularly in the Black communities of Hunter's Point and the Western Addition, and particularly among persons 25 years of age and younger. Many clients represented by the Public Defender's Office hold the Office personally responsible for the treatment the City gives them and which they resent.

These are grave and disturbing concerns. Consequently the Committee had other studies made. In its measured judgment, the condemnations and criticisms are overstated and not warranted to the full extent of their severity. *Nevertheless*, the fact that they were made by a neutral and experienced team, such as the N.L.A.D.A., and particularly the fact that minorities in this City feel as *strongly as they do*, are themselves facts of life. They are major elements in the equation of justice. They cannot be ignored.

Seeking the causes of this criticism and distrust, and cutting through the thicket of relatively minor deficiencies, the Committee finds three (3) major roots:

1. Plea Bargaining and the fact that the Public Defender's Office pleads most of its clients guilty.
2. Insensitivity of the incumbent Public Defender to the duties, purposes and proprieties of his office.
3. Small representation of minority groups on the staff of the Public Defender, and failure of the Public Defender's Office to be closer to the localities from which its clients come.

Some of these deficiencies are easily curable, some not. The first *does* involve the Public Defender's Office, but it also extends beyond to the whole system of criminal justice and leads into fundamental arguments about how that system should work. Conditions external to the Public Defender have increased the burden on the office. In 1954, the year the present Public Defender first took office, there were 19,685 arrests in San Francisco, not counting drunk arrests or arrests for other cities, states, counties, or federal authorities. In 1969 the comparable arrests were over 41,100, an increase by a multiple of 2.1. The number of attorneys in the Public Defender's Office increased from 7 to 24, or an increase by a multiple 3.4. The increase in the number of arrests is only part of the story. More cases now come to the Public Defender's Office. In 1955 it handled 1,057 misdemeanor cases in the Municipal Court, 1273 defendants in the Municipal Court on felony charges, 884 in the Superior Court, and no juvenile cases. In 1969, it reported, it handled 22,994 misdemeanor cases in the Municipal Court, 6069 in that court on felony charges, and 2,507 in the Superior Court, plus 816 in the Juvenile Court. If the figures are reliable, the increase was from 3,216 in 1955 to 32,386 in 1969, or roughly a multiple of 10. Actually the statistics published by the Public Defender appear to exaggerate the case-load of the Office grossly.⁶ But, even so, the increase from 1955 has been great. Nor is that the whole story. New court decisions have amplified the rights of accused and imposed greater burdens on defense. Trials are now longer than they used to be, many more motions are made than formerly, and most are in writing. The situation in San Francisco resembles that throughout the United States as recently described by Chief Justice Burger of the United States Supreme Court in an address to the American Bar Association on August 10, 1970:

“*** the increase in volume of cases is not by any means the whole story. *** the actual trial of a criminal case now takes twice as long as it did 10 years ago because of the closer scrutiny we now demand as to such things as confessions, identification witnesses, and evidence seized by the police, before depriving any person of his freedom. These changes represent a deliberate commitment on our part — some by judicial decision and some by legislation — to values higher than pure efficiency when we are dealing with human liberty. The impact of all the new factors — and they are many and complex — has been felt in both state and federal courts.”

Concurrently other heavy demands on the taxpayer make it difficult to expand the Public Defender's staff.

These facts do not exonerate the Public Defender, but they deter the Crime Committee from being too harsh in its judgments.

A. Plea bargaining and the fact that the Public Defender's Office pleads most of its clients guilty.

By far the most persistent criticism of the Public Defender's Office by persons in the minority communities is that the Office is reluctant to go to trial for its clients. The Office has been frequently characterized simply as an adjunct of a system designed to elicit guilty pleas from defendants. The Committee has been asked to ascertain “whether the Public Defender's Office is going to trial often enough,” and it has made a diligent attempt to reach an answer to that question.

6. For a critique of the reliability of these figures, see the Appendix to this Report.

Unfortunately, though, there is simply no way to arrive at a precise answer to this inquiry. Each time that any defense attorney — including an attorney on the Public Defender's staff — decides whether or not to recommend that his client accept a plea bargain, he must make a judgment as to his client's chances of acquittal if he goes to trial and as to the severity of the sentence should he be convicted.

In short, numerous variables must enter into an attorney's professional appraisal of each case that he handles. Unless one were to second-guess the Office's attorneys on each case, there is no way of determining whether the Public Defender's Office should go to trial more frequently. Attempted statistical comparisons between San Francisco and other jurisdictions have been of limited value, for several reasons. The State keeps no records of the cases handled by public defender offices. And even if such figures were available, other factors would be relevant. One would have to know the quality of the arrests being made by the police elsewhere, the screening process and policies of the local District Attorney, and even the confidence that the Public Defender has in the quality of the local trial bench. It is often more important for a criminal lawyer to know the temperament of the judges than to know the law. One would also have to know the extent of current court congestion in the counties examined for comparison. These variables, and others, are analyzed in an Appendix to this Report. The conclusions we reach from that analysis are these:

(a) The felony clients of the San Francisco Public Defender's Office have received plea bargains which have been generally more lenient than bargains in the rest of the State;

(b) The Office's felony clients have received plea bargains which have been generally more lenient than bargains made with defendants represented by private counsel in San Francisco;

(c) The Office has taken felony clients to trial at about the same rate as the private bar in San Francisco; and

(d) The rate of acquittals in felony cases handled by the Office has been lower than the rate of acquittals in felony cases throughout the State and lower than the rate of acquittals in felony cases handled by private counsel in San Francisco. However, as this Report indicates later, an acquittal rate is not an accurate index of the success of the Office's trial deputies.

In addition to the statistical data, there are other observations which may help to explain the character and quality of felony plea bargaining as it is practiced by the San Francisco Public Defender's Office:

1. Many of its felony clients cannot afford bail. There is an undeniable (yet also unmeasurable) coercion to plead guilty, and get things over with in order not to sit in jail.

2. The Office will not consent to the entry of a plea of guilty to a felony before a preliminary hearing, because it feels that the hearing provides the first substantial estimate of the prosecution's case. This policy gives a defendant more protection than a policy followed by some Public Defender Offices in the State of permitting a guilty plea merely on the basis of the police report and discussions with a defendant and the District Attorney's Office.

3. No study made for the Committee discloses a single instance of a felony defendant represented by the San Francisco Public Defender's Office entering a plea of guilty involuntarily or without fully understanding the consequences of his guilty plea.

4. Because ex-convicts have more difficulty getting jobs than other people, an ex-convict charged with a crime is more likely to be in an economic situation such that he will be represented by the Public Defender's Office. And since an ex-convict's felony record may be introduced at trial to impeach his testimony if he takes the witness stand, it is much harder to defend an ex-felon than a first offender.

5. The low rate of acquittals by the Public Defender's Office is not an accurate index of the success of its trial deputies. When a defendant is charged with several offenses, but is convicted on only one charge, the Office, as well as the Bureau of Criminal Statistics, still counts the defendant's case as a conviction, not an acquittal. Similarly, the acquittal rate does not reflect the Office's success in cases where defendants were found guilty of lesser offenses than those that they were originally charged with.

Though comparatively few cases go to trial, judges and prosecutors, as well as private attorneys, have expressed a very high regard for the trial skills of the Public Defender's eight Superior Court trial deputies. The staff of the Committee has observed these men often working ten and twelve-hour days when in trial. They take their duties with more than ordinary dedication. During 1968-1969 the Office went to trial on 10 murder cases, obtained two acquittals, two verdicts of not guilty by reason of insanity, 4 verdicts of manslaughter and only 2 verdicts of first degree murder. This is a good record for murder cases.

The Crime Committee's conclusion is that no evidence supports any claim that, in handling felony cases, the Public Defender's Office is over-pleading its clients guilty or that those clients are not being properly represented. In fact, as the Committee's Report on the Adult Probation Department noted, felony defendants in San Francisco are frequently the beneficiaries of attempts to clear congested court calendars.

Misdemeanor Cases

While the Crime Committee cannot say that felony clients of the Public Defender's Office are not protected adequately, the picture in misdemeanor cases is different. But that picture must be examined carefully to see which faults are those of the Public Defender and which are those of other components of the criminal justice system.

The Public Defender's Office reports that during 1969-1970 it represented 11,752 misdemeanor defendants (not including traffic cases) who either pleaded guilty, or were found guilty, or had their charges dismissed, or were found not guilty. It reports that out of this total, 8,077 defendants pleaded guilty. That leaves 3,675 defendants whose cases were disposed of in an undisclosed way. We know that the Office handled less than 100 misdemeanor jury trials, *including* an unspecified number of traffic cases. There is no record whatever of how many non-jury cases were tried, but it would appear that there are fewer non-jury trials than jury trials. The Chief Deputy Public Defender states that there were "few" non-jury trials because, if a case is to be tried, the Office normally demands a jury because there is some sentiment that judges tend to become cynical after serving for long periods on the criminal bench. Sometimes a case is submitted to a judge

on the basis of the police report in the case, which means that no additional evidence — on either side — is presented. But there is no evidence of how often this procedure is followed.

For the most part, the Deputy Public Defender determines the merits of his client's case on the basis of a three-to-four minute interview. The deputies conduct interviews with their clients of that morning in holding cells, adjacent to the courtrooms. These interviews are by no means private, since there are usually 15 to 25 defendants in each holding cell. The Office has explained that it must conduct its interviews in this manner because the breakfast schedule at City Prison (and the job of getting prisoners ready to go to court) makes it difficult for the Police to get prisoners downstairs much before nine o'clock.

An illustration of the system at work, and an explanation for the small number of trials in misdemeanor cases, emerges from the following case-history, based on a factual interview by the staff of the Committee:

Ralph and Fred are both 19-year old Black men, residents of the Western Addition and both unemployed, although Fred is a part-time student at City College. One night about 11 P.M. they are waiting for a bus on Geary Street. Because the wind is blowing, they stand in the doorway of a small shop, closed for the night. A police squad car pulls up at the curb, two officers get out to make an investigation, and after some discussion, arrest Fred and Ralph for loitering, trespass, and failure to identify themselves and take them to City Prison at the Hall of Justice. Fred makes a phone call to his family and is told they have no money for bail. The two then spend the night in a cell with 15 to 20 other men.

The next morning, after a breakfast of coffee and mush, they are taken downstairs and placed in a cell adjacent to one of the general Municipal Courts. There are, again, 15 to 20 other men in the cell with them. One man, who is obviously going through heroin withdrawal, gets sick and vomits. Three other men are dressed up as women and look strange because their beards are beginning to show. One other man sits in the corner talking to himself.

At about 9 o'clock, a Deputy Public Defender enters the cell and explains to all the defendants that he will be appointed as their attorney. He also tells them that he will try to get each of them released on O.R. (Own Recognizance) if he can, and he tells them that they have a right to a jury trial. He then interviews each of the defendants briefly, except for the defendant who is sitting in the corner and who cannot talk to him.

Fred and Ralph quickly tell him their story and also protest that they have not done anything wrong. The Public Defender asks them if they can make bail, and they tell him they cannot. Close to 10 o'clock, the attorney leaves the cell and Court convenes. As the case of each defendant is called, he goes into the courtroom before the Judge. Over 70% of these defendants will have their cases dismissed entirely, or will enter guilty pleas, at this first appearance.

When Fred's and Ralph's case is called, they are led out of the cell and into the courtroom. The Public Defender meets them near the attorney's table. He tells them that he has checked the police report and their rap sheet. "Look, I don't think that you guys did anything either, but I can't get you O.R.," he says. "I know this Judge, and he refuses to O.R. anybody with a prior record." Fred and Ralph each have one prior misdemeanor conviction. "I'll talk to the D.A. about dismissing your case, but I

can't promise you anything." At this point, the Judge asks if the case is ready, and the Public Defender asks that it be passed until after the recess. Fred and Ralph are taken back to the cell.

During the recess, the Public Defender again enters the cell. He tells the defendants that he has talked with the D.A. and that the D.A. will not dismiss the case. However, the D.A. will recommend a 30-day suspended sentence, and probation to the court, in exchange for a guilty plea. Fred and Ralph both ask the Public Defender about going to trial. He tells them that he can get them a trial before a judge in about 10 days, but that they will have to wait for about 20 to 30 days for a jury trial. Fred and Ralph figure out for themselves that they will be in jail during this time. They discuss the problem and decide to take the D.A.'s offer on a guilty plea. The Public Defender again tells them that they have a right to go to trial and that the Public Defender's Office will raise all possible defenses, but they both insist on entering a guilty plea to get out of jail.

After the recess, Court again convenes and their case is again called. They step up to a lectern in front of the Judge, escorted by the Public Defender. The Judge asks them how they plead, and, after a glance at the Public Defender, who nods to them, they each say, "Guilty." The Judge asks them if their plea is "voluntary," and after another glance and another nod, they each reply that it is. The District Attorney then moves to dismiss two of the charges and recommends a 30-day suspended sentence to the Court. The Court accepts the recommendation, puts each of them on probation to the Court (which means that they are not subject to the supervision of the Probation Department), and makes an oral order finding them guilty on the loitering charge. The whole process takes about three minutes.

After picking up their personal belongings in the basement of the Hall of Justice, Fred and Ralph go home.

These two young men were little changed by this experience, except that they saw criminal justice at close range with its warts and wrinkles. They also knew that they would have to write down another criminal conviction on every job application that they would ever have to fill out. But they were out of jail and they were going home. There is little doubt that they had been discriminated against, not because they were Black but because they were poor. They did not have the money to obtain a release on bail. The example of Fred and Ralph is not unique; Deputy Public Defenders assigned to the Municipal Courts estimate that between ten and fifteen per cent of all their clients have good defenses to the charges lodged against them but plead guilty simply to get out of jail. This is a moral blemish on the community and the system of justice. And even if the number of innocent is not so great, yet if a guilty man thinks he is innocent of wrong but pleads guilty because he cannot make bail, a sense of injustice rankles in him and in the entire minority community of which he is a part.

Yet who is at "fault"? The Deputy Public Defender explicitly advises the defendants in the holding cell of all their rights, including their right to a full trial. He has simply told them the truth about the way in which the system works, the time that they will have to wait for trial. One deputy put it this way:

What am I supposed to do, tell them that they *have* to sit in jail for a month so that they can be found innocent? I'm not going to play God with some guy who wants to get back to work or wants to see his wife and kids. And I don't like having to interview fifteen defendants in a holding cell, either, but those are my clients and that is where I have to interview them, and Court starts at ten.

There is a "fault", but it does not lie entirely with the Deputy Defender. Nor, *in and of itself*, is there anything wrong with plea bargaining resulting in guilty pleas and light or suspended sentences. As Chief Justice Burger recently said:

"***** Yet the most experienced defense lawyers know that the defendant's best interests may be served in most cases by disposing of the case on a guilty plea without trial.

* * *

"There is another factor. It is elementary, historically and statistically, that systems of courts — the number of judges, prosecutors, and of courtrooms — has been based on the premise that approximately 90% of all defendants will plead guilty leaving only 10%, more or less, to be tried. * * * A reduction from 90% to 80% in guilty pleas requires the assignment of twice the judicial manpower and facilities — judges, court reporters, bailiffs, clerks, jurors and courtrooms. A reduction to 70% trebles this demand."

The real deterrence offered by the criminal law to condemned conduct in most matters lies not in the severity of penalties but in the quickness and certainty of imposition of any penalty and the social condemnation flowing from accusation and sentence. Society profits by speedy disposition of a charge, the guilty profits by a light or suspended sentence, and both can be achieved by a guilty plea on a plea bargain.

But this ought not to be accomplished by convicting on a plea of guilty and punishing the innocent. Two precautions are therefore essential:

- (1) The innocent should not be coerced into a plea of guilty, and
- (2) every person arrested should have a fair opportunity to have his case reviewed by counsel.

Fault lies in several places. It lies, for one, with the courts for being needlessly frugal, and often arbitrary, about permitting the release of misdemeanor defendants on their own recognizance (O.R.), that is, without bail, and it is the incarceration of indigent defendants which effectively coerces pleas of guilty from innocent people. And, again, even if some are truly guilty and would fail to appear for trial if released on O.R., the City and the cause of justice would suffer less than it does now.

Furthermore, if the system of justice is to continue as it has, arresting and pouring such a mass of defendants into the courts and granting them the time and man-consuming protections judicial decisions require, then there simply are not enough public defenders to staff the Municipal Courts. The valve should be closed farther up-stream than the Public Defender's Office. When 17% of those arrested have their cases dismissed in court, and the Public Defenders estimate that 10-15% of their misdemeanor clients have good defenses but plead guilty so as not to languish in jail while waiting trial, the police should be more careful of their arrests. When the arrested man is brought to the station house, the police sergeant should screen out and not book those flimsily arrested. The District Attorney should screen again and seek dismissal of charges against innocent men who are booked. Perhaps there should be fewer arrests on minor charges. All these subjects the Crime Committee will seek to deal with in its report or reports to be issued on the police, the District Attorney, and non-victim crime. Perhaps court procedures can be

improved so that cases can be brought to trial sooner; that subject the Crime Committee will deal with in its report on the courts. Finally, some measure of responsibility unquestionably lies with the Public Defender's Office as well as these other agencies. The Public Defender's Office represents the largest number of criminal defendants prosecuted in the San Francisco courts. When practices develop that violate the law or render it impossible to afford proper representation to defendants, we believe it is the duty of this office to take all proper legal steps to correct the practices.

Even more fundamental than all this is a conflict or tension between a law enforcement policy concentrating on "cleaning up crime" and a policy of being scrupulously watchful of the accused. That conflict cannot be resolved on the Public Defender's level although it produces frustration and resentment there.

Immediately, however, there are some things which can be done. We are dealing with two problems: first, that an innocent man acquires a police record merely by having been arrested; second, that an innocent man sometimes pleads guilty simply to get out of jail. Our suggested solution to these problems is the following:

1. Citations should be issued in lieu of arrest by all police officers whenever it is consistent with the public safety.
2. When an officer believes that a person should be arrested rather than cited for a misdemeanor, the decision should be reviewed in the station by a supervising officer (1) to make certain that there is sufficient evidence to warrant an arrest, and if so (2) to see if a citation will not serve the purpose.
3. As to those still held in custody after the foregoing screening, the court should release them on their own recognizance whenever possible and consistent with the public safety.
4. The means of preventing a tarnished record is already partly available in existing law. Section 851.6 of the Penal Code provides that when a person is arrested without a warrant and is released without being formally charged with a crime, he *shall* be issued a certificate describing the action as a detention. Because the District Attorney automatically files a complaint against almost every person arrested for a misdemeanor, this section does not presently give sufficient protection to the innocent. We recommend that Section 851.6 of the Penal Code be amended to add the following provision:

"In any case in which a person has been formally charged but the case is dismissed by the District Attorney or by the court for insufficient evidence, and in any other case in which the court determines that it will serve the interests of justice, the court shall direct the arresting agency to issue the person a certificate describing the action as a detention. The court records shall also reflect this disposition of the case."

Until recently in San Francisco certificates under Penal Code 851.6 were not issued unless the person arrested requested it, and ordinarily he was unaware of his right to a certificate. Fortunately the Police Department recently issued a general order to correct this situation. The Department should give full effect to the new policy and issue certificates, when warranted, *without* request.

As already noted, *a misdemeanor defendant frequently has the merits of his case determined on the basis of a three-to-four minute interview with a Deputy Public*

Defender. This is not adequate time to permit an attorney to investigate possible defenses. Moreover, this cursory screening makes it impossible for the system to make intelligent correctional sentencing or to utilize a properly operating probation system. A misdemeanor violation may be the first symptom of a personality disorder which might lead to markedly more serious criminal behavior, but a defendant who is being rushed through the Municipal Courts is not likely to have his problems even noticed. The authorities at City Prison should arrange their morning schedule so that all misdemeanor prisoners are ready for attorney interviews by 8:30 a.m. and all of them should be taken down to court at approximately 9:45 a.m. The interviews could be conducted in the four attorney-interview rooms at City Prison and also in the area now reserved for visits by family and friends. However, it would be impossible to effect this interview procedure unless the Public Defender's Office has more deputies available for Municipal Court service. Until more fundamental correctives relieve the pressure, three additional Deputy Public Defenders are needed.

B. Insensitivity of the incumbent Public Defender to the duties, purposes and proprieties of his office.

There is a strong dedication on the part of most Public Defender Deputies to their duty of acting as an advocate on behalf of the accused, and they know that the rights of their clients are under close scrutiny, if not attack. These are hard times in which to be a public defender; morale must unquestionably play a part in the day-to-day job done by a Deputy Public Defender. There can be no doubt that the Public Defender himself has an enormous influence on the style of his Office and on its morale.

Yet he appears to conceive of the function of his office as "processing" so many "head" at a minimum cost to the city per head; he takes pride in clearing the calendar at a small *per capita* cost⁷ and is unaware of the moral problems involved. The minority communities of the City feel this and resent it. In his transmittal letter covering his report for the year ending June 30, 1970, the Public Defender states that in cases represented by his Office, not including traffic cases, the courts imposed fines totalling \$195,498. This might be a prideful boast in a District Attorney's report; it is a strange denizen in a report of a public defender.

When the study team from the National Legal Aid and Defender's Association visited the Office in November of 1969, it received a number of comments from a sizable number of attorneys on the staff of the Office, highly critical of some of the policies of the Public Defender. After the report of the N.L.A.D.A. team was made available to the Office, something occurred in the Office, in consequence of which the Crime Committee's second investigative team, Messrs. Weiss and Harunaga, received practically no adverse

7. The Appendix to this Report indicates that the Public Defender employs a statistical counting system which exaggerates the number of defendants actually represented, thereby achieving a lower *per capita* cost than is justified.

comments, of any kind, from staff attorneys whom they interviewed. The Crime Committee's ultimate conclusion is that the N.L.A.D.A. study team did in fact obtain an accurate sample of opinion in the Public Defender's Office about its morale. Morale has been impaired for a number of reasons:

One is that the Public Defender is engaged in a number of private businesses and, on frequent occasions, has required Office staff to work on his private interests during Office hours, and he has done so when the services of those employees were urgently needed for public business and despite the fact that he was frequently requesting the City for more staff positions. The Crime Committee estimates that, during the past year, the staff of the Public Defender has spent several weeks of time on this kind of business. While the Public Defender has told representatives of the Crime Committee that he never uses employees for personal business when they are needed for Office business, the facts are not in accord.

The staff of the Committee interviewed several attorneys in the Office who were outraged by such use of Office talent. The Office suffers from a serious shortage of clerical and secretarial help, and its attorneys have had to do without secretarial help because the secretaries had been diverted to personal business.

It is self-evident to the Committee that whoever chooses to be Public Defender should give up all active management roles in private business and should refrain from using any and all Office employees for work, of any kind, on personal business ventures. The attorneys on the staff are not allowed to engage in private practice in order that their indigent clients will receive their full attention and so the taxpayers will receive full value for the salaries the City pays them. The same standard should apply to the Public Defender.

Another practice injurious to morale is one that formerly may have been common in other public agencies in San Francisco and which lingered on in the Public Defender's Office until the Public Defender saw a copy of the N.L.A.D.A. report to the Crime Committee early in 1970. As a condition of employment in the Office, all deputies were required to contribute one per cent of their monthly salary to a Public Defender Public Relations Fund, to provide for charitable contributions by the Public Defender, testimonial expenses, contributions to political campaigns of certain City and County supervisors, and the like. After the N.L.A.D.A. asked the Public Defender about the Fund, the requirement of mandatory contributions has been discontinued, although deputies are still expected to pay up delinquencies which existed at the time the Fund was discontinued. The Public Defender should cease attempting to collect delinquencies in the Public Relations Fund from his attorneys. A vote should be taken among the contributors to the Fund to decide how the balance should be spent. In no event should any of the Fund be devoted to any campaign costs incurred in any future election, nor should any campaign contributions be solicited or accepted from employees. Since funds of this character can too easily be used in ways violating Section 3202 of the California Government Code, they should be avoided entirely.

C. Representation on the staff of the Public Defender of
minority groups and failure of his Office to be
closer to the localities from which his clients come.

Some deputy Public Defenders have estimated that between 50% and 60% of all their clients are either Black, Chicano, Latino, or Chinese.⁸ It is almost impossible to exaggerate the importance of the Public Defender's services to those San Franciscans who live in our minority neighborhoods. The whole system of criminal justice—from the police to the courts to the correctional system—is largely managed and directed by whites. Many residents of minority communities, not only in San Francisco but in most American cities as well, distrust the criminal justice system as a manifestation of a white-dominated power structure having little interest in protecting minority rights or interest.

The Public Defender's role in this system is crucial, for he is the only public official in the criminal justice system to whom the law assigns not only the right but the duty to act as an *advocate* for the rights and interests of those charged with crime. The availability of the services of the Public Defender is the most visible and tangible example of the law's dedication to *equal* justice in American society. To the poor, and to many minority group citizens, the Public Defender stands for what the system has given *them*. He is *their* man.

As earlier portions of this report indicate, the minority communities distrust the Public Defender. It makes little difference whether the distrust and antagonism is based wholly, partially, or not at all on myth. What people believe, they act on.

The Public Defender's Office has been aware of the problem of rapport between it and the minority communities. The Office has made legitimate attempts to recruit both Black and Chicano lawyers from the Bay Area for its staff. There are currently two Black lawyers and one Chinese-American lawyer in the Office, and these attorneys are all in positions of considerable responsibility. Yet the Office has not recruited actively at local law schools, since, as they explain it, their limited budget does not permit them to hire a law-school graduate who must wait about nine months (after graduation from law school) before being licensed to go into court. Although this explanation is justified, we recommend that the Office should, nonetheless, send a representative to Bay Area law schools at the time when private firms launch their recruiting drives. Even though the Office may not be able to make hiring commitments to law students who have not passed the bar examination, the Office should let minority law students know that the Public Defender is interested in hiring minority lawyers. Moreover, many law students have only very superficial notions about the day-to-day job of being a Public Defender, and these notions appear to be unnecessarily cynical.

In addition to its attempts to recruit minority lawyers, the Office has tried in other ways to improve its relationship with the minority communities. In April, 1967, the Public

8. During 1968, 38 per cent of all felony defendants processed by the San Francisco courts were Black. This is the second highest percentage of Black felony defendants for any County in the State, ranking behind Alameda County, where 42.2 per cent of all felony defendants processed were Black. Superior Court Prosecutions; Table XVI.

Defender undertook to enter into an agreement with the Civil Service Department, by which three to five minority-group paraprofessionals would be hired by the Office to work as investigator-trainees, pursuant to the City's New Careers Project. The proposal failed to materialize.

In June, 1970, an excellent and imaginative service was added to the office, paid for by federal funds. An experienced social worker from "Self Help for the Elderly" was assigned to work in the Public Defender's Office. Assisted by three social work students, she is assisting indigent clients of the office in resolving financial and other problems that confront them and their families. She also attempts to assist them in developing a positive plan for rehabilitation that may be presented to the court at the time of sentencing, so that the court has a more constructive alternative than jail in appropriate cases. This pilot program seems to be working well and plans are being made to expand it by seeking additional federal assistance.

Since February, 1970, Mr. Charles Warner, one of the Principal Attorneys in the Office, has been serving as an advisor to the Law and Justice Task Force of the Bayview-Hunter's Point Model Cities Community Board. The Law and Justice Task Force, with cooperation from the Public Defender's Office and the Law Students Civil Rights Research Council, developed a proposal for the establishment of a neighborhood criminal defense office in the Bayview-Hunter's Point area. This proposal was approved by the Bayview-Hunter's Point Model Cities Community Board, has been included in the comprehensive Model Cities plan, and has been sent to the Board of Supervisors for ratification. If ratified, it will be sent to the Federal Department of Housing and Urban Development for funding.

Many of the reasons justifying the establishment of a neighborhood criminal defense office are found in a proposal that has recently been made by the Bayview-Hunter's Point Model Cities program. They seek a neighborhood criminal defense office, directed in part by the Bayview-Hunter's Point Community itself, in order to improve the confidence of that Community in the criminal justice system. In addition, the project will serve as an experiment — a pilot program — by which the feasibility of neighborhood-based defender services can be measured. Although the Public Defender's Office has not formally endorsed the proposal, it has expressed a desire to cooperate with the Model Cities Agency in the development of a community-based defense office.

During the first year of its operation, the project would be funded entirely by the U.S. Department of Housing and Urban Development (H.U.D.). If the project proves to be successful during its first year, further funding may come from H.U.D. or from private foundations, or partial funding (60%) may come from the federal Law Enforcement Assistance Administration, pursuant to the Safe Streets Act of 1968, as amended, or City funding might be required. There is a good likelihood that the City will not have to assume a substantial financial obligation, even if the program were continued beyond the first year.

The budget proposed for the project includes an unnecessary allotment of \$30,000 for law student trainees and fringe benefits for these positions, and for three instead of two secretaries. With these items eliminated, the total project cost is reduced from \$219,717.00 to about \$184,072.00 and appears appropriate to the Committee.

The Committee recommends that the Board of Supervisors approve the component of the Bayview-Hunter's Point Model Cities Comprehensive Plan that proposes the establishment

of a Community Defender's Office in the Bayview area, first reducing the proposal budget as suggested above. The Committee further recommends that without compromising quality standards, every effort should be made in future appointments to the Public Defender's legal staff to increase the number of lawyers from minority groups.

III.

PROBLEMS IN REPRESENTING FELONY DEFENDANTS

Line-Ups: The Public Defender's Office now assigns attorneys to police line-ups three or four times per week, as required by recent decisions of the United States Supreme Court. (*United States v. Wade*, 388 U.S. 218 (1967); *Gilbert v. California*, 388 U.S. 263 (1967)). Representation by the office at line-ups seems thorough and professional. Deputies were observed interviewing the defendant and explaining to him the procedures of the line-up, objecting and obtaining changes in line-up procedures when unfair (e.g., defendant being the only person in the line-up with a moustache), interviewing prosecution witnesses present at the line-up, and obtaining the cooperation of the Police Department in having photographs of the line-up taken and made available.

Preliminary Hearings: Preliminary hearings are handled by deputies assigned to the Municipal Courts. Although some deputies admitted being less than thoroughly prepared for preliminary hearings before January, 1970, and when the National Legal Aid and Defender Association conducted its study, all evidence indicates that the deputies are now well prepared. Since January the Office has introduced two standard forms for use in preliminary hearings, and their use is well supervised by the Chief Deputy, Mr. Robert Nicco. One form is a pre-hearing interview form designed to elicit relevant information about the alleged crime. The other provides for a summary of the prosecution's evidence introduced at the hearing, recommendations about pre-trial motions, names of witnesses, and personal information about the defendant.

Investigation: In serious matters, and particularly in homicides, the facts and circumstances of a case may be investigated personally by the Superior Court Deputy to whom the case is assigned after the preliminary hearing. Not all deputies follow this procedure; others have done so, usually at night and on weekends.

Most often, the facts and circumstances of a case are worked up by one of the Office's three investigators. Unfortunately, none of the investigators is Black, and none speaks Spanish or Chinese. This is unacceptable in a City like San Francisco where there are large Black, Chicano, Latino and Chinese populations and where investigations must be conducted in neighborhoods largely defined along ethnic lines. The Public Defender's budget request for 1970-1971 asked for two additional investigators, preferably Black, because "white investigators have difficulty in investigation in the heavily populated black areas, which results in lack of investigation." The request was deleted in the Mayor's office in its hard-pressed efforts to keep the tax rate down.

Yet the hiring of minority investigators is not simply a question of giving the Office more money. Section 34.1 of the City Charter provides that, "Notwithstanding any other

provisions of this charter, occupants of all positions in the office of... the public defender, except assistant attorneys... shall be subject to the civil service provisions of this charter..." On the other hand, the same section of the Charter specifically *excludes* investigators in the District Attorney's Office from Civil Service requirements. This distinction is an historical accident.

Selection of the Public Defender's investigators should not be by Civil Service. An investigator's task is only part skill. It is also part art. There is no way to estimate the importance to an investigator of the community contacts, the sources of information, that he can rely on. In order to be truly effective, an investigator must know his community — its characters, its hang-outs, and its streets. This is the kind of knowledge which does not lend itself to Civil Service testing, although it is the kind of knowledge which often enables an investigator to get his information. Thus, the Committee recommends that the Public Defender be allowed to appoint his investigative staff free of Civil Service requirements, and an enabling Charter amendment to that effect is found in the Committee's recommendations at the end of this Report.

There is always the possibility that such a power of appointment, free of Civil Service, will be abused. In this case, however, that possibility seems remote. The Public Defender, in his budget request for 1970-1971, is on record as wanting additional minority-group investigators. The minority communities in the City will surely know if that promise is not fulfilled, given the opportunity to do so.

Jury Selection: The Public Defender's Office should keep a record of jurors called in both the Superior and Municipal Court cases, for a juror often sits on more than one criminal trial. This procedure, followed by many Public Defender offices, would entail little clerical effort but would provide deputies with minimal information about prospective jurors. Even a stenographer's transcription of *voir dire* notes, filed under the name of the juror, would be helpful.

Appeals and Writs: The Public Defender's Office routinely files a notice of appeal from every felony conviction after trial and a request for the appointment of counsel on appeal. Unless the defendant advises the Court of Appeal that he does not wish to prosecute his appeal, that court will appoint a private attorney to represent him. The Public Defender's Office itself now prosecutes appeals from felony convictions "on a selective basis," but has no appeals division unlike the Alameda County Public Defender's Office, which handles almost all its appellate work. The budget proposal for 1970-1971 of the San Francisco Public Defender included a request for three attorneys to staff an Appellate Department.

The Crime Committee does not think it necessary for the Public Defender to have an appeals unit or division. The services of private attorneys on appeal, appointed by the Court of Appeal, are paid for by the State. An appeals unit in the Public Defender's Office would be paid for by the City. Bearing in mind the budget problems of the City, the additional funds that the City can allot to the Public Defender's Office should be used for more representation in the Municipal Courts than for appellate work. And the protection of the rights of appellants will not suffer, for, from all indications, the work done by appointed counsel is excellent. Most frequently, the appointee is a young attorney working in a program sponsored by the Barristers Club of San Francisco. Often an appointment in an indigent criminal appeal is the first opportunity for a young attorney to prove his skills on appeal. Several Justices of the State Court of Appeal have

said that they believe the work of appointed counsel on appeal to be more eager, dedicated and thorough than the work of many a private attorney.

And there are other advantages to have appeals handled by counsel appointed by the Court of Appeal. The appointment of private counsel, particularly young attorneys, introduces many of them to the problems and issues of the criminal law. The criminal justice system will profit if the brains of the practicing bar devoted primarily to civil practice are drawn into criminal concern. Moreover, the appointment of private counsel on appeal acts as a check on the quality of representation by the Public Defender's Office at the trial stage. Appointed private attorneys will have few qualms about raising issues of adequate representation and investigation by the Public Defender.

Although the Public Defender's Office generally leaves appeals to appointed counsel, it has been handling an increasing number of applications to the Court of Appeal for writs, usually to contest rulings on the sufficiency of the evidence against a defendant or rulings on lawfulness of searches. These writs, as well as the few felony appeals by the Office, have been handled by Mr. Charles Warner, and many deputies have commented that his work has been excellent. Mr. Warner's time is often pre-empted by trial duty in the Superior Court. He could effectively use a law student for legal research on his appellate cases, working part-time under a work-study contract subsidized in part by the federal government. The Office requested \$4,800.00 for law student help for the current year. A sum of \$3,000.00 (averaging \$250.00 per month) seems more reasonable, and the Mayor and the Board of Supervisors should allow an appropriation not to exceed this amount.

IV.

PROBLEMS IN REPRESENTING MISDEMEANOR DEFENDANTS AND IN JUVENILE COURT

Although felony defendants have their rights to an appeal well protected, in the first seven months of 1970 the Public Defender's Office took only five misdemeanor appeals, and four arose out of the San Francisco State College mass arrest cases, tried in 1969. It is not office policy to file a notice of appeal and a request for appointment of counsel on appeal for convicted misdemeanor defendants. Yet some of the most commonly used misdemeanor statutes — trespass, loitering, and failure to identify — are vaguely worded and are subject to abuse. Some questions about their meaning and Constitutionality may deserve to be settled on appeal. The Public Defender's Office should conduct a seminar on possible rights on appeal on its misdemeanor clients and seek the assistance of private counsel if necessary in handling misdemeanor appeals.

Representation in Juvenile Court

The decision of the United States Supreme Court in 1967 in *In re Gault*, 387 U.S. 1 established that once a petition is formally filed with the Juvenile Court, an alleged delinquent child is Constitutionally entitled to the assistance of an attorney, and at an initial detention hearing the Court must appoint an attorney for the child unless there is

an intelligent waiver of that right by the child (and see Sec. 634, California Welfare & Institutions Code). This imposes new burdens on the Public Defender's Office. Before December, 1969, most Juvenile Court representation was provided by four attorneys from the Legal Aid Society of San Francisco under a grant from the federal Office of Economic Opportunity. The Public Defender's Office also maintained one full-time attorney, Mrs. Estella Dooley, at the Juvenile Court. Her representation has been considered excellent by all those who have had occasion to work with her and by clients whom she has defended.

In December, 1969, the Legal Aid Juvenile Court program ended, leaving the Public Defender's Deputy as the only available full-time public official. The Public Defender made several requests to City officials for funds for three additional deputies to be assigned to the Juvenile Court. In January, 1970, the Mayor advised him that he appreciated the situation but, pointing to the City's critical financial crisis and lack of funds, asked the Public Defender to review present assignments of personnel in order to cover the Juvenile Court. The Public Defender concluded that he could not divert attorneys from the Hall of Justice to Juvenile Court. On February 27, 1970, attorneys from the Mission Office of the San Francisco Neighborhood Legal Assistance Foundation filed suit in the United States District Court in San Francisco against the Juvenile Court on behalf of five arrested juveniles, alleging that they were not receiving adequate representation by counsel (*Scott v. Mayer*, N. D. Cal., No. C-70-441 GSL). The Court ruled that the juveniles were not intelligently waiving their right to an attorney and were not adequately represented, and that the City should provide more attorneys at the juvenile court. Subsequent activity of Neighborhood Legal attorneys, the Public Defender's Office, the Barristers Club, and the San Francisco Bar Association and conference with the Mayor resulted in the Mayor's inclusion in his approved budget for 1970-1971 of three deputy public defenders for the Juvenile Court, on a temporary basis. But the Board of Supervisors deleted the request. Juveniles *will* have attorneys, because of a federal court order, and if the court appoints private attorneys, they will be paid on a case-by-case basis from City funds under Penal Code Section 987a. Since the minimum fee recommended by one of the lawyer's associations in San Francisco for a juvenile court case is \$200 per case, the court may award fees in that area. Yet the Deputy Public Defender assigned to the Juvenile Court estimates that she handled about 400 cases last year at a cost for her services of less than \$50 per case. By refusing to engage public defenders for Juvenile Court, the City is simply wasting money.

V.

OTHER PROBLEMS AND DEFICIENCIES OF THE PUBLIC DEFENDER'S OFFICE

A. Clerical matters and time-saving aids to the deputies

The clerical staff consists of one confidential secretary, one senior clerk-typist, three clerk-typists, and two legal stenographers. The confidential secretary is engaged principally with directing the clerical and secretarial staff and with the Public Defender's personal affairs. The clerk-typists are engaged in record-keeping and calendaring for the large number of clients represented by the office.

Thus twenty-three staff attorneys must rely, for their secretarial work, on just two legal stenographers, who must also answer incoming calls to the office and direct client inquiries to the proper attorneys. This is incredible. The staff attorneys are not even provided with dictating machines, and it is not uncommon for them to type their own case notes, trial briefs, and interview notes.

The Office has attempted to alleviate its secretarial needs by using standard stenciled forms for common motions. But many motions do not lend themselves easily for forms. And it is impossible to use forms for client interviews, investigative reports, and trial notes. In addition, the office has, within the past year, expanded its use of writs and appeals to higher courts, and these matters must be individualized. The present gross secretarial understaffing converts attorneys into overpriced secretaries. The office does not even have any kind of duplicating equipment. Attorneys on the staff frequently must reproduce excerpts from cases, police reports, medical reports, and interview notes. Sometimes they try to use a Xerox machine in the Police Department, but they must often wait — up to half a day — until police business is finished. Private attorneys find it incredible that a law office of twenty-four attorneys has no duplicating or copying machine.

Providing the lawyers in the Public Defender's Office with adequate secretarial and mechanical aids will free their time for their professional duties. More lawyers are needed, but fewer additions will be required if the lawyers are freed to do what they alone can do. Each Superior Court deputy and the Chief Deputy should have a dictating machine, the office should have a copying machine, and there should be two additional legal stenographer positions.

B. Hiring policies

The Public Defender decides, in his sole discretion, whom to hire and fire as attorneys. Until January, 1970, he insisted that applicants have two years or more of general trial experience. This saved the Office the time and expense of training lawyers but discouraged young attorneys with excellent law school backgrounds who were prepared to make a career of indigent criminal defense work. The two-year experience requirement has now been relaxed.

C. Training for staff attorneys

There is no standard training program for new attorneys. They are frequently first assigned to Traffic Court for a good working introduction to cross-examination. Then they are usually assigned to one of the Municipal Courts, first working with more experienced deputies and later handling trials on their own. This kind of apprenticeship training has apparently been successful, since none of the Municipal Court Judges interviewed by the Committee staff had any reservations about the trial skills of the younger Deputy Public Defenders.

Formal in-service education, however, could be improved, for the criminal law is becoming more and more complex, with myriad decisions defining the rules of search and seizure, evidence, and psychiatric defenses. Many Public Defender's Offices in California sponsor regular seminars, conducted by experts, on common factual issues raised in

criminal trials such as the mechanics of ballistics tests, the identification of narcotics, and advances in forensic psychiatry. Members of the staff of the Los Angeles Public Defender's Office have said that their in-service educational programs have been indispensable. Currently the San Francisco Public Defender's Office holds bi-weekly office conferences, but they appear to be devoted primarily to a discussion of office management problems and policies. Consequently, the Crime Committee recommends that the Public Defender's Office institute regular in-service educational programs, and that these programs consider both changes in criminal law and evidential matters frequently arising in criminal trials. These programs could make use of the materials prepared by other offices such as that of Los Angeles and by educational programs conducted by the University of California Continuing Education of the Bar program.

D. Use of law students.

The Public Defender's Office in cooperation with three local law schools, Hastings, Golden Gate, and the University of San Francisco, sponsors "clinical" programs to familiarize law students with the practical aspects of the law. The efforts of Mr. Nicco, Mr. Perasso, and Mr. Pierucci of the Public Defender's Office have received warm compliments from the law schools. The Office currently employs two law students as summer interns in work-study agreements with the law schools.

Some Public Defender's Offices now employ law students to conduct interviews with clients. Although almost *any* personal interview would improve the quality of current Municipal Court representation, the Committee does not favor the use of law students, instead of lawyers, for that purpose. An interviewer must be fully aware of the legal relevance of the data which he collects and know what to look for. Otherwise he collects useless trivia. The interviewer either sees possible legal defenses or he misses them. In this vital process experience is essential. Many attorneys feel that it would take as much time to check out an interview done by a law student as to do the interviewing themselves. The Public Defender's Office is frequently criticized for failing to provide enough attorney-client contact. The use of law students to interview clients would merely aggravate a feeling among clients that they are not receiving adequate personal attention.

E. Library facilities

Lawyers depend on books. While this is less true of lawyers who spend most of their time in court doing criminal trial work, even they must keep up with the latest decisions of appellate courts, and, in recent years, those decisions have been voluminous. The advance sheets—the paperbound booklets containing the most recent appellate court decisions—are filled each month with decisions on numerous issues of evidence, procedure, and substantive criminal law.

There has been nearly uniform agreement within the Public Defender's Office that the library facilities are wholly inadequate. Each attorney in the office must purchase his own copy of his basic tool, the California Penal Code. Only two sets of California advance sheets come into the office, and they must be circulated among more than twenty attorneys. The library does not contain the following material, which would seem essential to a daily practice of criminal law:

Recent pocket supplements to Annotated Codes
Bound volumes of U.S. Supreme Court decisions
California Legislative Service
BNA Criminal Law Reporter
Continuing Education of the Bar publications on criminal law,
procedure, and writs.

The Board of Supervisors has appropriated only \$600 per year for the Office Library. Yet, during 1968-1969, the Public Defender *chose to spend only one-half the funds allotted for the library* and took some pride in the fact that he had economized. Comment by members and staff of the Crime Committee may have contributed to his spending more this following year.

Many judges and many members of the District Attorney's staff are not happy with library facilities at the Hall of Justice. The judges, public defenders, district attorneys and private attorneys could well share a central library facility at the Hall of Justice limited to matters of criminal law but otherwise comparable to the law library now in the City Hall. Any additional cost to the City would be very nearly offset by a reduction in the duplication of library materials now going to various libraries in the Hall of Justice.

VI.

SUMMARY AND RECOMMENDATIONS

By establishing a Public Defender's Office nearly 50 years ago, San Francisco was in the forefront of discharging public responsibility to defend the accused indigent. That Office has performed reasonably well because of the dedication and ability of the staff attorneys, but it has had a history of mediocre leadership in the top position of Public Defender itself. It is held in low esteem by the minority groups that furnish most of its clients. This and its present difficulties are the result of (1) its history of dull leadership, (2) the increasingly heavy burden thrown on it by (a) increased arrests and (b) by the new court decisions amplifying and clarifying the rights of the accused, and (3) difficulty of obtaining adequate staffing because of other heavy demands on the taxpayer.

The San Francisco Committee on Crime makes the following twenty recommendations:

To the People of San Francisco and to the Mayor and Board of Supervisors:

1. Amend the Charter of the City and County of San Francisco to provide for appointment instead of election of the Public Defender. We propose that Section 33 of the Charter be amended to read:

SECTION 33. The public defender shall be an elective officer and shall receive a salary of eight thousand dollars (\$8,000) per year. He appointed by the mayor, subject to confirmation by the board of supervisors. The mayor shall solicit nominations from the judges of the Superior Court of the State of California in and for the City and County of San Francisco, acting collectively, from the judges of the Municipal Court of the

City and County of San Francisco, acting collectively, and from each organization of lawyers in San Francisco entitled to representation at the Conference of Delegates under the Rules and Regulations of the State Bar of California. Each group of nominators may nominate one or more. The appointment must be made from among those nominated. The public defender shall furnish an official bond in the sum of ten thousand dollars (\$10,000). He must, at the time of his selection, be qualified to practice in all the courts of this state and must have been so qualified for at least five years next preceding his selection. He shall appoint, and at his pleasure may remove, such assistants and employees in his office as may be provided by budget and appropriation ordinances. He shall immediately upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give counsel or advice to any person charged with the commission of a crime.

Strikeout type shows deletions from present Section 33; underscoring shows additions. The provision about salary has already been suspended by Section 151.1.

2. Amend the Charter of the City and County of San Francisco to provide for appointment of the Public Defender's investigative staff free of Civil Service requirements. We propose that Section 34.3 of the Charter be added, as follows:

Notwithstanding the provisions of Section 34.1 of the charter and subject to the provisions of Sections 20 and 34 of the charter governing the appointment and removal of non-civil service employees and without competitive examination, the public defender may appoint as many investigators as are authorized by action of the board of supervisors upon the recommendation of the mayor in the annual budget, and annual or supplemental appropriation ordinance. Such investigator, or investigators, shall serve at the pleasure of the public defender.

To the Mayor and Board of Supervisors:

1. Provide for three additional Deputy Public Defenders for the Municipal Courts.
2. Provide for three additional Deputy Public Defenders for the Juvenile Court.
3. Approve the component of the Bayview-Hunter's Point Model Cities Comprehensive Plan that proposes establishment of a Community Defender's Office in the Bayview area after eliminating budget provisions for law student trainees and for more than two legal secretaries.
4. Provide funds for two additional legal stenographers in the Public Defender's Office, for a dictating machine for each Superior Court Public Defender and for the Chief Deputy Public Defender, and for one copying or duplicating machine.
5. Provide adequate budget to maintain a working library in the Public Defender's Office, but immediately take steps to create one central criminal law library in the Hall of Justice to serve the Courts, the District Attorney, the Public Defender, the Probation Office, the legal staff of the Police Department and private counsel.
6. Do not provide funds to establish an appellate unit in the Public Defender's Office.
7. Authorize an expenditure, not to exceed \$3,000.00, for the hiring of law-student help by the Office.

To the Public Defender Himself:

1. Recognize that the duty and function of the Public Defender is not to process a given number of faceless cases and clear the calendar but to represent specific people, however numerous they may be, each a separate human being.
2. Refrain from all active management in private business, devote full time to the duties of the Public Defender's Office, and avoid using office staff or employees for services of any kind in your private or personal business ventures.
3. Terminate collections from your staff to your Public Relations Fund, distribute the fund as the contributors to it direct, and neither solicit nor accept campaign contributions from any employee.
4. On future appointments to your staff, whenever possible and without compromising quality standards, appoint lawyers and investigators from minority groups. Send a representative from the Office to Bay Area law schools at recruiting time.
5. Have the Deputy Public Defenders available at City Prison to interview all misdemeanor defendants from 8:30 a.m. to 9:45 a.m. each morning.
6. Establish and keep a file, based on *voir dire* notes of the deputies, on jurors called for duty in the Superior Court.
7. Provide formal in-service education for your deputies by sponsoring regular seminars, conducted by experts, on changes in substantive law, on evidential matters frequently arising in criminal trials, and on possible rights on appeal of the misdemeanor clients of the Office, and make use of the materials available from other public defender offices and other sources.
8. Use all the funds appropriated by the City and County for the purpose to amplify and maintain the library of your office; keep it supplied with the codes and statutes of the State, the pocket supplements to the Annotated Codes, complete bound volumes of U.S. Supreme Court opinions, the BNA Criminal Law Reporter, and Continuing Education of the Bar publications on criminal law, procedure and writs.

To the Courts:

Be less frugal in releasing misdemeanor defendants on their recognizance; err on the side of leniency instead of rigorosity.

To the Police Department:

1. Make it possible for misdemeanor prisoners to be ready for interviews with their attorneys by 8:30 a.m., permit each such defendant represented by the Public Defender's Office to receive a personal interview with a Deputy Public Defender between 8:30 a.m. and 9:45 a.m. in the attorney-interview rooms and in the visitors' area.

2. Have the Station Sergeants and Lieutenants let the Desk Sergeant screen arrests carefully and not book those arrested on untenable grounds. In misdemeanor cases, the use of citations rather than incarceration should be used to the fullest extent consistent with the public safety.

To the District Attorney:

Design an administrative scheme, including a proposal for additional deputies, if necessary, by which misdemeanor charges can be screened before a complaint is filed. Adopt a lenient policy of dismissal on flimsy misdemeanor cases instead of plea bargaining for a guilty plea.

To the Legislature of the State of California:

1. Amend Penal Code, Sec. 851.6 to read as follows:

- “(a) In any case in which a person is arrested without a warrant and is released without being formally charged with a crime pursuant to paragraph (1) of subdivision (b) of Section 849, such person shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention.
- (b) In any case in which a person has been formally charged but the case is dismissed by the District Attorney or by the court for insufficient evidence, and in any other case in which the court believes it will serve the interests of justice, the court shall direct the arresting agency to issue the person a certificate describing the action as a detention. The court records shall also reflect this disposition of the case.
- (c) The Attorney General shall prescribe the form and content of such certificates.”

APPENDIX

**AN ANALYSIS OF PLEA BARGAINING AND TRIALS
IN FELONY CASES IN THE SAN FRANCISCO
PUBLIC DEFENDER'S OFFICE**

APPENDIX

An initial difficulty in attempting to compare state-wide statistics is that the San Francisco Public Defender's Office compiles its data on a fiscal-year basis, while the State's Bureau of Criminal Statistics keeps figures on a calendar-year basis. In addition, the Public Defender's own Annual Report (which contains a summation of statistical data on the cases that they have handled) is both confusing and contradictory. For example, the 1968-1969 Annual Report of the Public Defender's Office indicates that the Office handled 1350 felony cases in which the defendant either pleaded guilty to a felony or guilty to a lesser included offense, or was found guilty following trial. Later, however, the Report indicates that the Office processed at least 1700 Superior Court cases in which the defendant either pleaded guilty, was found guilty, or was "otherwise sentenced." Since it is hard to imagine a situation in which a defendant is sentenced without having been convicted of some offense, it is equally hard to imagine how these two figures (1350 felony convictions / 1700 sentencings) can be reconciled. Similarly, in calculating the total number of defendants represented by the Office during 1968-1969, the Report counts 5724 defendants represented at felony preliminary hearings in the Municipal Court and, in addition, 2,368 defendants represented in the Superior Court. Since every Superior Court defendant (excepting only those few who have been indicted by the Grand Jury)¹ has gone through a preliminary hearing, most of the Public Defender's clients in the Superior Court are counted twice — once at the Municipal Court level and once again in the Superior Court. Finally, the 1969-1970 Report shows the following number of defendants represented in misdemeanor cases and the disposition of those cases:

DEFENDANTS REPRESENTED IN MISDEMEANOR CASES

	<u>'68 - '69</u>	<u>'69 - '70</u>
Number of Defendants Represented	14,497	15,690

DISPOSITION OF MISDEMEANOR CASES

Defendants Pleading Guilty	6,263	8,077
Defendants Found Guilty	873	1,385
Defendants Dismissed or Discharged	2,671	1,996
Defendants Found Not Guilty	<u>249</u>	<u>294</u>
	10,056	11,752

For 1969-1970, the "Found Guilty" (1385) and "Found Not Guilty" (294) figures appear to indicate that at least 1679 misdemeanor defendants went to trial. However, the 1969-1970 Annual Report of the Office later states that there were less than 100 misdemeanor jury trials. One might expect that the remaining 1579 misdemeanor defendants were "Found Guilty" or "Found Not Guilty" after a court trial without a jury. Yet there are no statistics to indicate how many misdemeanor defendants had court trials, and the Office has informed the Committee that it asks for trials only rarely in

1. Although we do not know how many of the Public Defender's clients were indicted, the Office of the District Attorney reports only 513 indictments for *all* defendants processed in San Francisco during 1969-1970.

misdemeanor cases. Consequently, the most likely explanation for what happened to the overwhelming majority of defendants who were "Found Not Guilty" or were "Found Guilty" is that the Office submitted their cases to the court on the basis of the police reports. But we are told that this procedure is comparatively rare.

Figures such as these are all that the Committee has had. They are valuable only for the very dim light they shed on plea bargaining in felony cases, as follows:

1. During 1968-1969, the Superior Courts disposed of felony cases involving 1471 clients of the Public Defender. These dispositions resulted from trials, pleas, or dismissals.² Of this total (1471), only 63 defendants went to trial — thirty-eight (38) by jury and twenty-five (25) without jury. Thus, 4.2% of all felony defendants represented by the Office went to trial. In the entire State for the calendar year 1968, 11.3% of all felony defendants had their cases disposed of by trial.³ Also, during the 1968 calendar year, 4.9% of *all* felony defendants in San Francisco (including defendants represented by private counsel) had their cases disposed of by trial — about the same percentage of dispositions by trial as the Public Defender's Office itself.⁴

Thus a very rough conclusion is that felony clients of the Public Defender's Office are going to trial just about as frequently as are defendants who are represented by private counsel in San Francisco. However, defendants in San Francisco, whether or not they are represented by the Public Defender's Office, are having their guilt or innocence determined by a trial much less frequently than are defendants throughout the rest of the State.⁵

2. Of the 1471 felony cases disposed of by the San Francisco Public Defender's Office during 1968-1969, eight (8), or only 54/100 of one per cent (00.54%) were acquitted

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2. The Public Defender reports handling a total of 2368 cases in the Superior Court in 1968, but these include a large number of cases which require little or no time of his staff. Included, for example, are cases which were taken over by private counsel (201), cases certified from the Municipal Court to determine competence to stand trial (240), motions to revoke probation (90), and others of that sort.
 3. To be able to make meaningful comparisons, we deduct from the State total figures of trials, those cases in which the case was "tried" by submitting the lower court or Grand Jury transcript to the judge. During 1968, there were 10,010 such cases, of which 9,803 came from Los Angeles. Seventy-eight per cent (78%) of their trials are conducted in this fashion.
 4. Data from 1968 is used, for purposes of comparisons, because more recent data is not available from the Bureau of Criminal Statistics at the time of this writing. During 1969-1970, the Public Defender's Office disposed of 1566 felony cases. Eighty-five (85) went to trials; fifty (50) by jury trial and thirty-five (35) by court trial. Thus, during 1969-1970, 5.4% of the Public Defender's felony clients had their guilt or innocence determined by trial.
 5. If submissions on lower court transcripts are included as trials, then the total percentage of cases tried in San Francisco during 1968 was 7.2%. This makes the Public Defender's percentage of trials much lower than the City average, but we question counting transcript submissions as "trials" for the purposes of this Report. When the Office believes a case should be tried, it rarely submits a case on a transcript and usually insists on a full trial, either by court or by jury.

after trial. For the calendar year 1968, the Bureau of Criminal Statistics reports a state-wide average (excluding Los Angeles)⁶ of 2.7% of acquittals in felony cases. Also, during calendar year 1968, 1.2% of *all* felony defendants whose cases were disposed of in San Francisco were acquitted by trial.⁷ Thus, the rate of acquittals for felony defendants generally in the State (excluding Los Angeles) was about five times greater than the rate of acquittals for felony defendants represented by the San Francisco Public Defender's Office. Also, the rate of acquittals for felony defendants generally in San Francisco was 2.2 times greater than the rate of acquittals for felony defendants represented by the Public Defender's Office.⁸

3. During 1968-1969, the San Francisco Deputy Public Defender devoted only 107 days (total) to jury trials and 48 days (total) to court trials in felony matters. During 1969-1970, the Office devoted 388 days (total) to felony jury trials and 62 days (total) to felony court trials.

All of these comparative statistics appear to indicate, in a very rough way, that the Public Defender's Office has not been going to trial as frequently as it should, nor has it been gaining acquittals in as high a percentage of its cases as the local private bar. On the other hand, this data may well be offset entirely by the following factors:

1. According to the Bureau of Criminal Statistics, 36.8% of all persons who were arrested on felony charges in San Francisco during 1968 had their charges dismissed entirely *before their first appearance in Court*.⁹ This rate of pre-complaint felony releases was the highest in the State, being almost 40% higher than the State average. This striking fact will be analysed in greater detail in later reports of the Committee. There are several possible explanations: (a) One could be that the San Francisco Police make too many unjustified felony arrests which are screened out either by the Police or the District Attorney's Office before a complaint is filed; (b) Another would be that there are no more unjustified arrests than elsewhere, but that the Office of the District Attorney in San Francisco is more conscientious than other District Attorneys and does not prosecute unwarranted cases; (c) or, it could be that the San Francisco District Attorney's Office is overly protective of its record and brings formal felony charges only when practically certain of a conviction. If the explanation is either (b) or (c), then the Public Defender's Office is getting only the toughest felony cases, more difficult to defend than those coming to other Public Defender's Offices throughout the State.

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6. During 1968, Los Angeles had an acquittal rate of 9.8% of all felony defendants whose cases were disposed of. However, 67% of those felony defendants acquitted in Los Angeles were "tried" by having a transcript submitted to a judge.
 7. During 1968, San Francisco had the third lowest rate of felony acquittals of any county in the State. San Joaquin County was lowest (0.7% acquitted by trial); Imperial County was somewhat higher (0.9% acquitted by trial), followed by San Francisco (1.2%).
 8. The acquittal rate for defendants generally in San Francisco *included* defendants who were represented by the Public Defender's Office. Since the Office acquitted defendants at a lower rate than the city did generally, it is safe to say that the rate of acquittals by the private bar was *in excess* of 2.2 times greater than the rate of acquittals by the Office.
 9. This figure does *not* include defendants who were arrested on felony charges but whose charges were later reduced to misdemeanors, nor does it include defendants whose cases were dismissed at some later stage of judicial proceedings.

2. During 1968-1969, the Public Defender's Office represented 1700 felony defendants who pleaded guilty, were found guilty, or were otherwise sentenced. But only 85, or five per cent (5%) of all these convicted felony clients were sent to state prison. This rate is approximately one-third as great as the state-wide county average for 1968 for convicted felony defendants going to state prison,¹⁰ and it is also below the rate of state prison commitments for San Francisco, which was 8.2% in 1968.¹¹ In 1968, the felony clients of the San Francisco Public Defender's Office went to state prison only one-third as often as felony defendants throughout the State and only about 57% as often as all felony defendants in San Francisco.

Variables that affect the interpretation of this data and such rough conclusions as we believe can be gleaned from it, are found at page 6 *et. seq.* of this Report. .

10. The state-wide county average, for 1968, was 13.6%.

11. During 1968, San Francisco had the lowest percentage of convicted felons going to state prison of any county in the State.





